

BEFORE THE BOARD OF REAL ESTATE APPRAISERS

STATE OF IDAHO

ORIGINAL

In the Matter of the License of: )  
)  
BRENT T. BERRY, ) Case No. REA-L3-03-98-016  
License No. LRA-263, )  
) **STIPULATED REPRIMAND**  
Respondent. ) **AND FINAL ORDER**  
)  
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WHEREAS, information having been received by the Idaho State Board of Real Estate Appraisers (hereinafter the "Board") which constitutes sufficient grounds for the initiation of an administrative action against Brent T. Berry (hereinafter "Respondent"); and

WHEREAS, the parties mutually agree to settle the matter pending administrative Board action in an expeditious manner; now, therefore,

IT IS HEREBY STIPULATED AND AGREED between the undersigned parties that this matter shall be settled and resolved upon the following terms:

**A.**

1. The Board may regulate the practice of real estate appraisers in the State of Idaho in accordance with title 54, chapter 41, Idaho Code.

2. Respondent Brent T. Berry is a licensee of the Idaho State Board of Real Estate Appraisers and holds License No. LRA-263 to practice real estate appraisals in the State of Idaho. Respondent's license is subject to the provisions of title 54, chapter 41, Idaho Code.

3. Appraisals in the State of Idaho must comply with the minimum standards set forth in the Uniform Standards of Professional Appraisal Practices ("USPAP").

4. On or about March 22, 1997, Respondent prepared a "limited summary report" to "estimate the market values for approximately 40 parcels in the subject

subdivision” for the property located in the area of Fourth of July Creek, North Fork, Idaho (hereinafter the “Subject Property”). Respondent estimated the total value of the 40 parcels, which consisted of approximately 408.24 acres, to be \$2,107,115.00.

5. Respondent is licensed as a “State licensed residential real estate appraiser” which, pursuant to Idaho Code § 54-4104(14) and Board Rule 300 (IDAPA 24.18.01.300), means that Respondent is licensed to appraise “residential real property consisting of one (1) to four (4) noncomplex residential units having a transaction value less than one million dollars (\$1,000,000) and complex one (1) to four (4) residential units having a transaction value less than two hundred fifty thousand dollars (\$250,000).”

6. Respondent’s appraisal of the Subject Property was outside the scope of his license, in violation of Idaho Code § 54-4104(14), Board Rule 300, and USPAP (1997) Competency Provision.

7. Respondent’s appraisal report of the Subject Property #1 failed to meet the following requirements of USPAP Standards (1997):

a. Respondent failed to be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible report, in violation of Standards Rule 1-1(a).

b. Respondent committed substantial errors of omission or commission that significantly affected the appraisal, in violation of Standards Rule 1-1(b).

c. Respondent rendered appraisal services in a careless or negligent manner, such as a series of errors that, considered individually, may not significantly affect the results of the appraisal, but which, when considered in the aggregate, are misleading, in violation of Standards Rule 1-1(c).

d. Respondent failed to consider and analyze the effect on value, if any, of the assemblage of the various estates or component parts of the property and refrain from estimating the value of the whole solely by adding together the individual values of the various estates or component parts, in violation of Standards Rule 1-4(e).

e. Respondent's report failed to clearly and accurately set forth the appraisal in a manner that will not be misleading, in violation of Standards Rule 2-1(a).

f. Respondent's report failed to contain sufficient information to enable the persons who were expected to receive or rely on the report to understand it properly, in violation of Standards Rule 2-1(b).

g. Respondent's report failed to clearly and accurately disclose any extraordinary assumption or limiting condition that directly affected the appraisal and indicate its impact on value, in violation of Standards Rule 2-1(c).

8. The above-stated allegations, if proven, would constitute a violation of the laws and rules governing the practice of real estate appraisals, specifically Idaho Code § 54-4107(d) and (e) and IDAPA 24.18.01.300 and 24.18.01.700. Violations of these laws and rules would further constitute grounds for disciplinary action against Respondent's license to practice real estate appraisals in the State of Idaho.

9. Respondent, in lieu of proceeding with a formal disciplinary action to adjudicate the allegations as set forth above, hereby admits the violations and agrees to the discipline against his license as set forth in Section C below.

#### **B.**

I, Brent T. Berry, by affixing my signature hereto, acknowledge that:

1. I have read and admit the allegations pending before the Board, as stated above in section A. I further understand that these allegations constitute cause for disciplinary action upon my license to practice real estate appraisals in the State of Idaho.

2. I understand that I have the right to a full and complete hearing; the right to confront and cross-examine witnesses; the right to present evidence or to call witnesses, or to so testify myself; the right to reconsideration; the right to appeal; and all rights accorded by the Administrative Procedure Act of the State of Idaho and the laws and rules governing the practice of real estate appraisals in the State of Idaho. I hereby freely and voluntarily waive these rights in order to enter into this stipulation as a resolution of

the pending allegations.

3. I understand that in signing this stipulation I am enabling the Board to impose disciplinary action upon my license without further process.

**C.**

Based upon the foregoing stipulation, it is agreed that the Board may issue a decision and order upon this stipulation whereby:

1. Respondent agrees to accept a reprimand by the Board for appraising the Subject Property outside the scope of his licensure and for failure to ensure that his appraisal of the Subject Property complied with USPAP Standards.

2. Respondent shall pay an administrative fine of Five Hundred and No/100 Dollars (\$500.00) to the Board postmarked no later than thirty (30) days after the date of entry of the Board's Order.

3. Respondent shall pay investigative costs and attorney's fees in the amount of Two Hundred Fifty and No/100 Dollars (\$250.00) to the Board postmarked no later than thirty (30) days after the date of entry of the Board's Order.

4. Respondent's License No. LRA-263 shall be placed on probation for a period of six (6) months, commencing the date of entry of the Board's Order. The conditions of probation are as follows:

a. Respondent shall comply with all state, federal and local laws, rules and regulations governing the practice of real estate appraisals in the State of Idaho.

b. Respondent shall inform the Board in writing of any change of place of practice or place of business within 15 days of such change.

c. In the event Respondent should leave Idaho to reside or to practice outside of the state, Respondent must provide written notification to the Board of the dates of departure, address of intended residence or place of business, and indicate whether Respondent intends to return. Periods of residency or practice outside of Idaho

will not apply to the reduction of the probationary period or excuse compliance with the terms of this Stipulation.

d. Respondent shall fully cooperate with the Board and its agents, and submit any documents or other information within a reasonable time after a request is made for such documents or information.

e. Respondent shall make all files, records, correspondence or other documents available immediately upon the demand of any member of the Board's staff or its agents.

5. At the conclusion of the 6-month probationary period, Respondent may request from the Board reinstatement of License No. LRA-263. Any request for reinstatement must be accompanied by written proof of compliance with the terms of this Stipulation. The Board retains discretion to grant reinstatement of Respondent's real estate license or to deny reinstatement and continue the period of probation.

6. All costs associated with compliance with the terms of this stipulation are the sole responsibility of Respondent.

7. The violation of any of the terms of this Stipulation by Respondent will warrant further Board action. The Board therefore retains jurisdiction over this proceeding until all matters are finally resolved as set forth in this Stipulation.

**D.**

1. It is hereby agreed between the parties that this stipulation shall be presented to the Board with a recommendation for approval from the Deputy Attorney General responsible for prosecution before the Board at the next regularly scheduled meeting of the Board.

2. Respondent understands that the Board is free to accept, modify with Respondent's approval, or reject this stipulation, and if rejected by the Board, a formal complaint may be filed against Respondent. Respondent hereby agrees to waive any right

Respondent may have to challenge the impartiality of the Board to hear the disciplinary complaint if, after review by the Board, this stipulation is rejected.

3. If the stipulation is not accepted by the Board, it shall be regarded as null and void. Admissions by Respondent in the stipulation will not be regarded as evidence against Respondent at the subsequent disciplinary hearing.

4. The stipulation shall not become effective until it has been approved by a majority of the board and endorsed by a representative member of the Board.

5. Any failure on the part of Respondent to timely and completely comply with any term or condition herein shall be deemed a default.

6. Any default of this Stipulated Reprimand and Final Order shall be considered a violation of Idaho Code § 54-4107. If Respondent violates or fails to comply with this Stipulated Reprimand and Final Order, the Board may impose additional discipline pursuant to the following procedure:

a. The Chief of the Bureau of Occupational Licenses shall schedule a hearing before the Board. Within twenty-one (21) days after the notice of hearing and charges is served, Respondent shall submit a response to the allegations. If Respondent does not submit a timely response to the Board, the allegations will be deemed admitted.

b. At the hearing before the Board upon default, the Board and Respondent may submit affidavits made on personal knowledge and argument based upon the record in support of their positions. Unless otherwise ordered by the Board, the evidentiary record before the Board shall be limited to such affidavits and this Stipulated Reprimand and Final Order. Respondent waives a hearing before the Board on the facts and substantive matters related to the violations described in Section A, and waives discovery, cross-examination of adverse witnesses, and other procedures governing administrative hearings or civil trials.

c. At the hearing, the Board will determine whether to impose additional disciplinary action, which may include conditions or limitations upon Respondent's practice or suspension or revocation of Respondent's license.

7. The Board shall have the right to make full disclosure of this Stipulated Reprimand and Final Order and the underlying facts relating hereto to any state, agency or individual requesting information, subject to any applicable provisions of the Idaho Public Records Act.

8. This Stipulated Reprimand and Final Order contains the entire agreement between the parties, and Respondent is not relying on any other agreement or representation of any kind, verbal or otherwise.

I have read the above stipulation fully and have had the opportunity to discuss it with legal counsel. I understand that by its terms I will be waiving certain rights accorded me under Idaho law. I understand that the Board may either approve this stipulation as proposed, approve it subject to specified changes, or reject it. I understand that, if approved as proposed, the Board will issue an Order on this stipulation according to the aforementioned terms, and I hereby agree to the above stipulation for settlement. I understand that if the Board approves this stipulation subject to changes, and the changes are acceptable to me, the stipulation will take effect and an order modifying the terms of the stipulation will be issued. If the changes are unacceptable to me or the Board rejects this stipulation, it will be of no effect.

DATED this 13 day of April, 2000.

  
Brent T. Berry  
Respondent

I concur in this stipulation and order.

DATED this 20 day of April, 2000.

STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL

By Kirsten L. Wallace  
Kirsten L. Wallace  
Deputy Attorney General

**ORDER**

Pursuant to Idaho Code § 54-4106, the foregoing is adopted as the decision of the Board of Real Estate Appraisers in this matter and shall be effective on the 9 day of May, 2000. **IT IS SO ORDERED.**

IDAHO STATE BOARD  
OF REAL ESTATE APPRAISERS

By Paul J. Morgan  
Paul Morgan, Chair

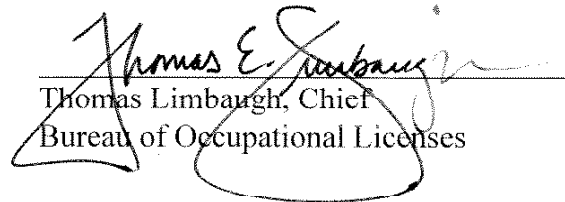


**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 11 day of May, 2000, I caused to be served a true and correct copy of the foregoing by placing a copy thereof in the United States Mail, postage prepaid, addressed to:

Brent T. Berry  
911 Shoup Street  
Salmon, ID 83467

Kirsten L. Wallace  
Deputy Attorney General  
P.O. Box 83720  
Boise, ID 83720-0010

  
Thomas Limbaugh, Chief  
Bureau of Occupational Licenses